

THE CHANGING OF DEFINITION ON “DANGEROUS DOGS” (IN HUNGARIAN LAW)

Adrienn Jámber

Second year full-time PhD Student,

University of Miskolc – Faculty of Law Department of Constitutional Law

Regulation on dangerous dogs or dogs categorized as dangerous was included in Act XXVIII of 1998 on the protection and humane treatment of animals as well as in Government Decree No. 35/1997 (II. 26.). Referred laws made a differentiation between dangerous dogs and dogs categorized as dangerous: pit-bull terrier and its cross-breeds¹ thereof were listed in the first group, while the second group included dogs which have caused serious injury to a human or another animal without having been incited and therefore categorized individually as dangerous by animal protection authority.² Why was this distinction wrong? In my opinion it is unjustified to distinguish the different breeds as to whether they are dogs or dangerous dogs. The legislator categorized only the pit-bull terrier and its cross-breeds as dangerous dogs and then the regulations which came out afterwards on possessing such dogs were irreconcilable to animal protection. Such as the one that in case a pit-bull had caused serious injury its life was to be taken. However, if the same injury was caused by an American Staffordshire the breed was only degraded to the categorization of dangerous dogs at most. I found it unreasonable and technically unfounded that the legislator specified particularly the pit-bull. If they had found it absolutely necessary to make this categorization why was it not extended to more breeds among others to the American Staffordshire? As for these two breeds they are practically from the same ancestors, their gene pool is the same for most part, and distinguishing them by appearance is quite difficult even for the experts. Us, people should not make discriminating regulations on a certain breed just because it has a strong, negative historical background. If it is absolutely essential to regulate the different breeds it would be just right to study the well known infamous attacks – also broadcast by the media. In most cases the attacking breeds were the Rottweiler, German Sheppard and the Doberman. These breeds are often of choice for guard-defender dogs. If the legislator for some reason had found it essential to make the category of dangerous dogs they should have absolutely considered the statistics. However, in this case the logical conclusion would be to ban these mentioned breeds – being dangerous - for the purpose of breeding, raising, random reproducing, exporting-importing, competing and using as well as training for guard-defend purposes. This interpretation furthermore would also conclude the continuous extension of this category therefore legal regulating of the category of dangerous dogs would eventually be extended to almost all breeds within a few years time. However, this is not right, it cannot be right. I strongly

¹ PAULOVICS Anita: *Állatvédelem az EU jogharmonizáció tükrében*. Virtuóz Kiadó, Budapest, 2002. 62.

² CZERNY Róbert: *Az állatvédelem tízéves törvénye és tízparancsolata (1998-2008)*. Rejtjel kiadó. Budapest, 2009. 130.

think that not the breed itself – regardless of the kind - but only the animal in question should be under inspection for categorization.

As of the 30th of September 2010, by its decision No. 49/2010 (IV.22.), Constitutional Court has annulled the referred Government Decree (also known as 'pit-bull law') based on its incompliance with the Act on the protection and humane treatment of animals. The Court did not investigate the detailed reasoning of the petition submitted against the referred Government Decree, as that, in the opinion of the Court, was unconstitutional in its entirety.³

Therefore, in line with the decision of Constitutional Court, as of the 30th of September 2010, pit-bull terrier and its cross-breeds thereof are not categorized to be dangerous animals anymore; breed-based discrimination among dogs is over. Hence, pit-bull terriers are allowed to be kept without permission and as of the 30th of September owners are not obliged to pay administration fee and use the equipment previously required for keeping these dogs; also the strict regulations are not applicable anymore. In my opinion one breed cannot be determined more dangerous than another. Characteristics such as being dangerous are not specific to a breed in general, but an individual dog itself. Therefore, in my understanding, this kind of breed-based classification is an improper solution and cannot be supported. Dogs shall be examined and, based on such examination, categorized as dangerous individually – this is the main purpose of the process of categorization.

As a result of the annulment of Government Decree No. 35/1997 (II.26.) on keeping and giving a permission to keep dangerous dogs or dogs categorized dangerous created a gap in law as this regulation was referred to in several laws of higher and lower level as well. Further problems arouse as the process of categorization was not properly regulated, however, this process was necessary whenever a dog would injure a human or an animal and the concerned turn to the competent authority, they would not be able to proceed effectively and lawfully. Independently from our dedication to the protection of animals we have to admit that there are dogs which are more problematic than others. However, these problems seem to be solved in the course of continuous amendment of effective laws on protection of animals.

A complete amendment of Act XXVIII of 1998 on the protection and humane treatment of animals came into effect on 1st of January 2012; therefore questions related to dangerous dogs came into the limelight again. According to the definition given by the amendment 'dangerous dog is a dog categorized to be dangerous by the competent authority' – namely the merge of the two previous concepts is noticeable.

WHEN CAN THE CATEGORIZATION OF AN INDIVIDUAL ANIMAL BE IN QUESTION?

An individual animal can be categorized as dangerous by authority in the following cases,

- a.) the dog has caused physical injury and the points of the legal regulations on qualification for being dangerous have applied or,

³ 49/2010. (IV. 22.) AB határozat.

- b.) if the dog's physical and psychical condition imply that it could be harmful to a human and this situation can only be prevented by categorizing the animal dangerous.⁴

POSSIBLE SANCTIONS APPLIED IN CASE OF INJURY CAUSED BY A DOG

In case the dog has caused injury the following official sanctions could be applied upon either the animal itself or the owner. Sanctions afflicted upon the owner:

- a.) written warning,
- b.) stricter observances when dog is in public,
- c.) stricter requirements on conditions of keeping,
- d.) obligation for training of the animal by an expert in dogs' behavior.⁵

Sanctions afflicted upon the animal causing the injury:

- a.) mandatory neutering,
- b.) categorizing to dangerous,
- c.) dog's life to be taken according to cases described in the Animal Protection Act.⁶

In case injury is caused by dogs in pack sanctions must be applied upon all participating dogs.

During the investigation of the occurrence of the injury the circumstances in which the injury was caused must be inspected with special attention paid on the behavior of the injured person and the animals.

WHAT DOES THE PRACTICE OF THE MENTIONED SANCTIONS DEPEND ON?

Using the above sanctions depends on the seriousness of the injury caused by the dog as well as the circumstances the injury was caused.

The seriousness of the injury can be either healing within 8 days, over 8 days, serious, permanent or fatal.

When inspecting circumstances it is also taken into account whether the injury was caused in public or within the dog's own territory.⁷

REGULATIONS ON OWNING A DANGEROUS DOG

A dangerous dog with a permit given by the officials – after 45 days following categorization – could be kept by observing the following conditions:

Permit is valid for 2 years from the date of issue.

The conditions for having a permit issued are that the owner must be over 18 years of age and able.⁸ Obtaining and extending a permit is subject to fees.⁹

⁴ 1998. évi XXVIII. törvény az állatok védelméről és kíméletéről 24/A. § (1) bekezdés.

⁵ 41/2010. (II. 26.) kormányrendelet A kedvtelésből tartott állatok tartásáról és forgalmazásáról 17/C. § (3) bekezdés.

⁶ 41/2010. (II. 26.) kormányrendelet 17/C. § (4) bekezdés.

⁷ 41/2010. (II. 26.) kormányrendelet 4. számú melléklet.

⁸ PAULOVICS: *Állatvédelem az EU...* 63.

In addition to having a permit the owner must make sure that the animal is neutered and chipped.

REGULATIONS AND NECESSARY EQUIPMENT OF OWNING A DANGEROUS DOG

Label

A well visible label should be placed on the dangerous dog's leash. The cost of obtaining such label falls on the owner. The label must be at least 5 cm-s in width and include:

- on one side the owner's name, address and phone number
- on the other side the name of the dog and a warning "Dangerous".¹⁰

Dog - kennel

Dangerous dogs must be kept in kennels. Kennels are closed, fenced or railed spaces kept for the dog. Their purpose is to keep the dog from getting out into a public or neighboring area without supervision, furthermore withholding the animal from causing injury to either a human or another animal.¹¹

"Beware!" Dangerous Dog!"

The above sign of warning must be placed at the entrance and exit of the property the dog is kept. Next to the sign a well visible illustration of an attacking dog must be placed. The sign must be at a visible place and properly installed.

A muzzle as well as a not adjustable, 2 m-s at longest leash which also prevents slipping out and the owner as the permit holder

The dangerous dog could only be led in public or taken by any means of public transport with the above listed present at the same time. However, transporting such animal could also have stricter requirements. Regulations forbid letting the dog off leash or having its muzzle taken off.¹²

Further regulations

Supervision of a dangerous dog is not transferable to a person not holding a permit, not even temporarily. Ownership of dangerous dog is not transferable, new owner must obtain a new permit.

The Act reads that if one should find or capture such dog they must within 24 hours report it to the authorities and hand the animal over to the official of the authority.

⁹ ZOLTÁN Ödön: *Az állatvédelem jogi rendje*. KJK-KERSZÖV Jogi és Üzleti Kiadó Kft., Budapest, 2000. 84.

¹⁰ 41/2010. (II. 26.) kormányrendelet 17/H. § (1) bekezdés.

¹¹ 41/2010. (II. 26.) kormányrendelet 17/H. § (2) bekezdés.

¹² 41/2010. (II. 26.) kormányrendelet 17/I. § (1) bekezdés.

Stray dangerous dog must be captured as soon as possible and the owner must be notified. If the owner is willing to cover the cost of capturing, safe-keeping and supervising, they can get the dog back – at the first time and by acknowledging the fine placed by the authorities.

TAKING THE LIFE OF A DANGEROUS DOG

According to the Act the animal protection authority can order the dog to be put down in case the animal causes fatal injury to a human and an expert on animal behavior finds it undoubted that the animal's intention was to cause injury.

Furthermore, according to the Act the animal protection authority can order the dangerous dog to be put down in the following cases:

- a.) the authorization for keeping a dangerous dog shall not happen within 15 days of the final order of categorizing;
- b.) if the conditions for safe keeping determined by the permit do not meet by a given deadline or at the most by the 30th day from the date the permit was issued;
- c.) neutering and marking by microchip do not happen by the 30th day from the date the permit was issued;
- d.) the dog causes injury before the conditions for safe keeping determined by the permit are realized;
- e.) regulations concerning the dog's safe keeping are violated therefore the dog causes injury;
- f.) if the dog is confiscated by legal order from the owner or the keeper of the dog after their being under prosecution or penal procedure.¹³

The animal protection authority by its power can also order the dog to be put down while this has conjunctive conditions, namely:

- a.) the dog causes serious or permanent injury to a human;
- b.) the owner of the dog is not known within 14 days;
- c.) the proper treatment for the dog's behavior problems cannot be ensured;
- d.) an expert on dogs' behavior finds it undoubted that the animal's intention was to cause injury.¹⁴

FINAL THOUGHTS

Legally the definition of dangerous dogs and dogs categorized as dangerous were different however, the Constitutional Court found that the whole legislation was unconstitutional so it was repealed. With this however, the Constitutional Court created a legal gap in the system as both higher and lower legislations would refer to the edict. Nevertheless, the problems seem to be resolving with the presently ongoing revising of the animal protection legislations.

REFERENCES

¹³ 1998. évi XXVIII. törvény 24/C. § (1)-(2) bekezdés.

¹⁴ 1998. évi XXVIII. törvény 24/C. § (3) bekezdés.

[1] CZERNY Róbert *Az állatvédelem tízéves törvénye és tízparancsolata (1998-2008)*. Rejtjel kiadó. Budapest, 2009.

[2] PAULOVICS Anita: *Állatvédelem az EU jogharmonizáció tükrében*. Virtuóz Kiadó, Budapest, 2002.

[3] ZOLTÁN Ödön: *Az állatvédelem jogi rendje*. KJK-KERSZÖV Jogi és Üzleti Kiadó Kft., Budapest, 2000.

LEGAL SOURCES

[1] 1998. évi XXVIII. törvény az állatok védelméről és kíméletéről [Act XXVIII of 1998 on the protection and and humane treatment of animals]

[2] 41/2010. (II. 26.) Korm. rendelet a kedvtelésből tartott állatok tartásáról és forgalmazásáról [Government Decree No. 41/2010 on the keeping and selling of companion animals]

[3] 49/2010. (IV. 22.) AB Decision [No. 49/2010. (IV. 22.) Constitutional Court Decision]